

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
	)	
CB HOLDING CORP., <u>et al.</u> , <sup>1</sup>	)	Case No. 10-13683 (MFW)
	)	Jointly Administered
Debtors.	)	Hearing Date: March 9, 2011 at 11:30 a.m. (ET)
	)	Objection Deadline: March 2, 2011 at 4:00 p.m. (ET)

**DEBTORS' MOTION FOR ORDER APPROVING SALE OF  
LIQUOR LICENSE NUMBER 02740020 FREE AND CLEAR OF  
ALL LIENS, CLAIMS, ENCUMBRANCES, ATTACHMENTS, AND OTHER INTERESTS**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”),  
by and through their undersigned attorneys, hereby file this motion (the “Motion”) for entry of an

<sup>1</sup> The other Debtors, and the last four digits of each of their tax identification numbers, are: 1820 Central Park Avenue Restaurant Corp. (5151); Bugaboo Creek Acquisition, LLC (4629); Bugaboo Creek Holdings, Inc. (0966); Bugaboo Creek of Seekonk, Inc. (1669); CB Holding Corp. (8640); CB VII, Inc. (9120); CB VIII, Inc. (1468); Charlie Brown North (6721); Charlie Brown’s Acquisition Corp. (8367); Charlie Brown’s at Clifton, Inc. (7309); Charlie Brown’s Mark Corp. (3569); Charlie Brown’s Montclair, Inc. (4223); Charlie Brown’s 1981, Inc. (7781); Charlie Brown’s of Allentown, L.L.C. (8420); Charlie Brown’s of Alpha, Inc. (9083); Charlie Brown’s of Berwyn, LLC (3347); Charlie Brown’s of Blackwood, L.L.C. (5698); Charlie Brown’s of Bloomsburg, LLC (3326); Charlie Brown’s of Brielle, Inc. (8115); Charlie Brown’s of Carlstadt, Inc. (6936); Charlie Brown’s of Chatham, Inc. (2452); Charlie Brown’s of Commack LLC (4851); Charlie Brown’s of Denville, Inc. (1422); Charlie Brown’s of East Windsor, LLC (2747); Charlie Brown’s of Edison, Inc. (8519); Charlie Brown’s of Egg Harbor Twp, LLC (none); Charlie Brown’s of Franklin, LLC (5232); Charlie Brown’s of Garden City, LLC (7440); Charlie Brown’s of Hackettstown, L.L.C. (7493); Charlie Brown’s of Harrisburg, LLC (1085); Charlie Brown’s of Hillsborough, Inc. (0344); Charlie Brown’s of Holtsville, LLC (0138); Charlie Brown’s of Jackson, LLC (3478); Charlie Brown’s of Lacey, L.L.C. (6282); Charlie Brown’s of Lakewood, Inc. (0156); Charlie Brown’s of Langhorne, LLC (3392); Charlie Brown’s of Lynbrook LLC (2772); Charlie Brown’s of Maple Shade, Inc. (0404); Charlie Brown’s of Matawan, Inc. (8337); Charlie Brown’s of Middletown LLC (7565); Charlie Brown’s of Oradell, Inc. (0348); Charlie Brown’s of Pennsylvania, Inc. (6918); Charlie Brown’s of Piscataway, LLC (8285); Charlie Brown’s of Reading, LLC (1214); Charlie Brown’s of Scranton, LLC (9817); Charlie Brown’s of Selinsgrove, LLC (6492); Charlie Brown’s of Springfield, LLC (9892); Charlie Brown’s of Staten Island, LLC (1936); Charlie Brown’s of Tinton Falls, Inc. (6981); Charlie Brown’s of Toms River, LLC (5492); Charlie Brown’s of Union Township, Inc. (8910); Charlie Brown’s of Trexlertown, LLC (6582); Charlie Brown’s of Wayne, Inc. (4757); Charlie Brown’s of West Windsor, Inc. (0159); Charlie Brown’s of Williamsport LLC (8218); Charlie Brown’s of Woodbury, Inc. (0601); Charlie Brown’s of York, LLC (0980); Charlie Brown’s of Yorktown, LLC (7855); Charlie Brown’s Restaurant Corp. (7782); Charlie Brown’s Steakhouse Fishkill, Inc. (9139); Charlie Brown’s Steakhouse Woodbridge, Inc. (1906); Charlie Brown’s, Inc. (4776); Jonathan Seagull Property Corp. (7248); Jonathan Seagull, Inc. (9160); The Office at Bridgewater, Inc. (3132); The Office at Cranford, Inc. (3131); The Office at Keyport, Inc. (1507); The Office at Montclair, Inc. (3128); The Office at Morristown, Inc. (3127); The Office at Ridgewood, Inc. (2949); The Office at Summit, Inc. (3126); and What’s Your Beef V, Inc. (4719). The Debtors’ address is 1450 Route 22 West, Mountainside, NJ 07092.

order, pursuant to Bankruptcy Code §§ 105(a) and 363(b)(1), Bankruptcy Rules 2002, 6004, and 9014, and Local Rule 6004-1, approving the sale of liquor license number 02740020 (as described in greater detail below, the “Liquor License”) free and clear of all liens, claims, encumbrances, attachments, and other interests. In support of the relief requested in this Motion, the Debtors respectfully represent as follows:

### **JURISDICTION**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Bankruptcy Code §§ 105(a) and 363(b)(1), Bankruptcy Rules 2002, 6004, and 9014, and Local Rule 6004-1.

### **INTRODUCTION**<sup>2</sup>

2. On November 17, 2010 (the “Petition Date”), the Debtors filed with this Court separate, voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On November 19, 2010, this Court entered an order directing the joint administration of the Debtors’ separate Chapter 11 cases.

3. The Debtors continue to manage their properties and operate their businesses as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108. No trustee or examiner has been appointed in these cases. On December 1, 2010, the United States Trustee appointed an official committee of unsecured creditors (the “Committee”) for these cases.

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<sup>2</sup> A more detailed description of the Debtors, their corporate and capital structure, and these cases is set forth in the various motions and other pleadings filed by the Debtors on or about the Petition Date, copies of which can be obtained by visiting [www.cbhinfo.com](http://www.cbhinfo.com).

4. The Debtors own and operate the brands known as *Charlie Brown's Steakhouse* ("Charlie Brown's"), *Bugaboo Creek Steak House* ("Bugaboo Creek"), and *The Office Beer Bar & Grill* ("The Office"). There are currently 20 total Charlie Brown's restaurants in New York, New Jersey, and Pennsylvania; 12 total Bugaboo Creek restaurants in Massachusetts, Delaware, Maryland, New Hampshire, and Maine; and seven The Office restaurants in New Jersey.

5. A variety of external factors have led to a decline in the Debtors' revenue over the last several years, at the same time that costs have increased, and the economy has struggled, greatly impacting the Debtors' customer base. Accordingly, for some time, the Debtors have been in discussions with their lenders and other parties regarding a financial restructuring.

6. Prior to the Petition Date, the only party willing to provide the operations and to work toward a restructuring was Ally Commercial Finance LLC (f/k/a GMAC Commercial Finance LLC) ("Ally"), one of the Debtors' pre-petition senior secured lenders, which was only willing to do so as a DIP loan in Chapter 11. In an effort to maximize their value, the Debtors commenced these cases and entered into a DIP arrangement with Ally (which incorporates a settlement of various issues with the Committee), and during these cases, the Debtors intend to market and sell substantially all of their assets expeditiously pursuant to Bankruptcy Code § 363.

7. By order entered on January 21, 2011 (Docket No. 468), this Court approved the sale of The Office to Villa Enterprises Management.

## FACTUAL BACKGROUND<sup>3</sup>

8. The Debtors closed 29 Charlie Brown's and 18 Bugaboo Creek restaurants (collectively, the "Closed Restaurants") in the week prior to the Petition Date. On December 13, 2010, this Court entered an omnibus order (Docket No. 176) authorizing the rejection, nunc pro tunc to the Petition Date, of the leases related to the Closed Restaurants.

9. The Debtors are not currently utilizing the liquor licenses for the Closed Restaurants and have returned certain liquor licenses that may not be transferable to the applicable state, county, town, or municipality control board or agency. The remaining liquor licenses for the Closed Restaurants are valuable assets of the Debtors, and in order to preserve the value thereof for their creditors and other parties-in-interest, the Debtors have retained Hilco Real Estate, LLC ("Hilco"), to market and sell the remaining liquor licenses for the Closed Restaurants, including the Liquor License.

10. The Debtors owned and maintained the Liquor License for use at their former Bugaboo Creek restaurant (the "Dedham Restaurant") located at 850 Providence Highway, Dedham, Massachusetts. As a result of Hilco's marketing efforts, on or about January 28, 2011, the Debtors entered into an agreement (the "Sale Agreement") to sell the Liquor License to Shack Foods of Dedham, LLC (the "Buyer").<sup>4</sup>

11. In accordance with the terms and conditions of the Sale Agreement, the Buyer has agreed to pay an aggregate purchase price of \$250,000 for the Liquor License.

<sup>3</sup> The description set forth herein is a summary and solely for convenience purposes; to the extent of any discrepancies between this description and the Liquor License, the terms of the Liquor License shall govern.

<sup>4</sup> A true and correct copy of the Sale Agreement is attached hereto as Exhibit A and is incorporated herein by reference. The summary of the Sale Agreement is intended solely to provide a brief overview thereof and to highlight those material terms and provisions required under Bankruptcy Rule 6004 and Local Bankruptcy Rule 6004-1. In the event of any inconsistencies between the summary and the Sale Agreement, the terms of the Sale Agreement shall govern.

### **RELIEF REQUESTED**

12. By this Motion, the Debtors respectfully request that this Court enter an order approving the Sale Agreement, finding that the Debtors are authorized to enter into the Sale Agreement, and authorizing the sale of the Liquor License, free and clear of all liens, claims, attachments, and encumbrances, to the Buyer.

### **BASIS FOR RELIEF REQUESTED**

#### **The Sale of the Liquor License is a Valid Exercise of the Debtors' Business Judgment**

13. Bankruptcy Code § 363(b)(1) provides, in pertinent part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.”

14. Although Section 363 does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate, courts have required that such use, sale, or lease be based upon the sound business judgment of a debtor. See, e.g., In re Martin, 91 F.3d 389, 394-395 (3d Cir. 1996) (court may defer to debtor so long as there is “legitimate business justification” to approve the use, sale, or lease of property outside the ordinary course of business (citing In re Schipper, 933 F.2d 513, 515 (7th Cir. 1991)); In re Fed. Mogul Global, Inc., 293 B.R. 124, 126 (D. Del. 2003); In re Montgomery Ward Holdings Corp., 242 B.R. 147, 153 (Bankr. D. Del. 1999); In re Del. & Hudson Ry. Co., 124 B.R. 169, 178 (D. Del. 1991); In re Allegheny Int’l, 117 B.R. 171, 176 (W.D. Pa. 1990).

15. Moreover, Bankruptcy Code § 105(a) empowers a court to issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].”

16. The purpose of Section 105(a) is to ensure a bankruptcy court's power to take whatever action "is appropriate or necessary in aid of the exercise of [its] jurisdiction." 2 Collier on Bankruptcy ¶ 105.01, at 105-5 (15th rev. ed. 1997) (footnote omitted), see also In re DeLorean Motor Co., 991 F.2d 1236, 1242 (6th Cir. 1993) ("The basic purpose of [Bankruptcy Code § 105(a)] is to enable the court to do whatever is necessary to aid its jurisdiction, i.e., anything arising in or relating to a bankruptcy case.") (citation omitted); In re Joint E. & S. Dist. Asbestos Litig., 129 B.R. 710, 843 (E.D.N.Y. & S.D.N.Y. 1991) ("[Section 105] has been construed to afford bankruptcy courts necessary flexibility to facilitate reorganizations."); In re Cooper Props. Liquidating Trust, Inc., 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986); Mgmt. Tech. Corp. v. Pardo, 56 B.R. 337, 339 (Bankr. D.N.J. 1985).

17. The Debtors believe that the proposed sale of the Liquor License to the Buyer will maximize the value thereof for the benefit of the Debtors' estates and creditors. Specifically, in the Debtors' business judgment, and based upon Hilco's marketing efforts to date, the Debtors believe that the Purchase Price of \$250,000 represents a fair sale price based upon the estimated value of the Liquor License.

18. In addition, the Debtors believe that the proposed sale to the Buyer will facilitate a quick and efficient disposition of the Liquor License. Because they are no longer operating the Dedham Restaurant, the Debtors submit that the Liquor License is not necessary and should be sold now to maximize its value.

19. Thus, the Debtors believe that there is a valid business justification for selling the Liquor License as provided for herein and consummating such sale as quickly as possible.

The Debtors Should Be Allowed to Sell the Liquor License by Private Sale

20. Bankruptcy Rule 6004(f)(1) provides that “sales not in the ordinary course of business may be by private sale or by public auction.”

21. Indeed, Courts often allow a Chapter 11 debtor to sell assets outside the ordinary course of business by private sale when the debtor demonstrates that the sale is permissible under Bankruptcy Code § 363(b). See, e.g., Palermo v. Pritam Realty, Inc. (In re Pritam Realty, Inc.), 233 B.R. 619 (D.P.R. 1999) (upholding bankruptcy court’s approval of private sale); In re Condere Corp., 228 B.R. 615 (Bankr. S.D. Miss. 1998) (approving private sale of debtor’s assets where standards of Bankruptcy Code § 363(b) were met); In re Wieboldt Stores, Inc., 92 B.R. 309 (N.D. Ill. 1988) (affirming right of debtor to transfer assets by private sale). Cf. In re Embrace Systems Corp., 178 B.R. 112, 123 (Bankr. W.D. Mich. 1995) (holding that private sale of debtor’s assets is appropriate if all provisions of Section 363 are followed, bid is fair, and sale is in best interests of debtor’s estate and creditors).

22. The Debtors have determined that selling the Liquor License pursuant to the Sale Agreement by a consensual private sale to the Buyer is in the best interests of the Debtors’ estates and their creditors. As noted above, the Debtors and Hilco have already engaged in a substantial and thorough marketing effort to sell the Liquor License for the highest and best price. Accordingly, the Debtors do not believe any higher or better offers will now (or in the future) surface.

23. Consequently, the Debtors believe that there would be no benefit to conducting any formal auction or a further bidding process for the Liquor License. Rather, the Debtors believe that any such auction or further bidding process (other than any informal process that could result upon service of this Motion on parties that the Debtors believe could be

interested in the Liquor License) would only generate increased costs and cause unwarranted delays of the sale of the Liquor License, without yielding a significantly higher purchase price or any notable benefit to the Debtors' estates or their creditors.

24. Thus, the Debtors believe that selling the Liquor License by private sale is justified in this instance.

#### The Proposed Sale Satisfies the Requirements of Bankruptcy Code § 363(f)

25. The Debtors presently believe that all of the liquor licenses have been pledged to Ally and/or their other pre and post-petition lenders. Furthermore, various other creditors may hold or assert security interests or other rights in the Liquor License.

26. In order to facilitate the sale of the Liquor License, as contemplated and required by the Sale Agreement, the Debtors request authorization to sell the Liquor License free and clear of any and all liens, claims, encumbrances, attachments, and other interests which may be asserted (including any claims for successor liability).

27. In accordance with Bankruptcy Code § 363(f), a debtor-in-possession may sell property "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is satisfied:

- (a) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (b) the [lienholder or claimholder] consents;
- (c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (d) such interest is in bona fide dispute; or
- (e) [the lienholder or claimholder] could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.



28. Because Bankruptcy Code § 363(f) is stated in the disjunctive, satisfaction of any one of its five requirements would suffice to warrant approval of the sale of the Liquor License free and clear of all liens, claims, encumbrances, attachments, and other interests. See Folger Adam Sec. Inc. v. De Matties/McGregor JV, 209 F.3d 252, 257 (3d Cir. 2000) (discussing how Section 363(f) authorizes sale of debtor's assets free and clear of all liens, claims, and interests if "any one of [the] five prescribed claims is met"); In re Kellstrom Indus., Inc., 282 B.R. 787, 793 (Bankr. D. Del. 2002) (property may be sold "free and clear" if at least one of the subsections of Section 363(f) is met); In re DVI, Inc., 306 B.R. 496, 503 (Bankr. D. Del. 2004) (same); see also Michigan Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.), 930 F.2d 1132, 1147 n.24 (6th Cir. 1991), cert. dismissed, 503 U.S. 987 (1992) (same).

29. The Debtors believe that they have or will satisfy one or more of these requirements:

- (a) First, based on the parties' discussions, the Debtors believe that their pre- and post-petition lenders have consented to the sale of the Liquor License proposed herein.
- (b) Moreover, if a holder of a lien, claim, encumbrance, or other interest or purported right receives notice of this Motion and does not object within the prescribed time period, such holder would be deemed to have consented to the sale free and clear pursuant to the terms proposed herein on that basis alone. See, e.g., Veltman v. Whetzel, 93 F.3d 517 (8th Cir. 1996) (failure to object to notice of sale or attend hearing deemed consent to sale for purposes of Bankruptcy Code § 363); In re Elliot, 94 B.R. 343, 345 (E.D. Pa. 1988) ("implied consent" was sufficient to satisfy the consent requirement of Bankruptcy Code § 363(f)(2) "[b]ecause [the secured creditor] admit[ed] that it received notice of the proposed sale and also admit[ed] that it did not file any timely objection the sale was authorized by § 363(f)"); In re Enron Corp., 2004 WL 5361245, at \*2 (Bankr. S.D.N.Y. Feb. 5, 2004) (same); Hargrave v.

Pemberton (In re Tabore, Inc.), 175 B.R. 855 (Bankr. D. N.J. 1994) (same).

- (c) Additionally, Bankruptcy Code § 363(f)(1) allows a sale to proceed free and clear of liens if the power to sell free and clear exists outside the bankruptcy context in another body of law. The existence of such ability is unquestionable here under applicable state law, such as state law foreclosure statutes. See Precision Indus. Inc. v. Qualitech Steel SBQ, LLC, 327 F.3d 537, 545 (7th Cir. 2003), rev'g Precision Indus., Inc. v. Qualitech Steel SBQ, LLC, No 00-0247, 2001 WL 699881 (S.D. Ind. Apr. 24, 2001) (reversing district court and finding that property sold pursuant to Section 363(f)(1) on account of state foreclosure law was sold free and clear of lessee's possessory interest in property). Indeed, outside of bankruptcy, the Debtors' lenders could have foreclosed upon the Debtors' assets -- including the Liquor License-- and then sold it free and clear of junior liens.
- (d) Finally, because the Debtors' secured creditors may be required to accept money damages in exchange for their interests, Bankruptcy Code § 363(f)(5) is satisfied. See In re Trans World Airlines, 322 F.3d 283, 290-91 (3d Cir. 2003) (property sold free and clear of interests when claims were subject to monetary valuation and satisfaction). Indeed, because the Liquor License would be sold for what the Debtors, approximate to be at least the fair market value thereof, the holders of any liens thereon could be compelled to accept money in satisfaction of such liens. See In re WPRV-TV, Inc., 143 B.R. 315, 321 (D.P.R. 1991), vacated on other grounds, 165 B.R. 1 (D.P.R. 1992), aff'd in part, rev'd in part, 983 F.2d 336 (1st Cir. 1993) (where "properties ... sold for the best price obtainable under the circumstances, and the liens will attach to the sale proceeds, the proposed sale [satisfies Bankruptcy Code § 363(f)(5)] and may be approved").

30. Thus, the Debtors submit that at least one (if not more) of the subsections of Bankruptcy Code § 363(f) will be satisfied, such that this Court should approve the sale of the Liquor License free and clear of all liens, claims, encumbrances, and attachments.

The Sale of the Liquor License Satisfies  
Good-Faith Requirement of Bankruptcy Code § 363(m)

31. Bankruptcy Code § 363(m) provides, in pertinent part, that:

The reversal or modification on appeal of an authorization under [section 363(b) or (c)] ... of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

32. The terms of the Sale Agreement were negotiated at arm's length, without collusion, and in good faith. Upon information and belief, the Buyer is not an insider, nor is it affiliated in any way with any of the Debtors.

33. Moreover, the Debtors have fully disclosed and requested this Court's approval of all terms and conditions of the Sale Agreement. See generally In re Colony Hill Assocs., 111 F.3d 269 (2nd Cir. 1997) (stating that the determination of "in good faith" is based upon traditional equitable principles, including whether there has been full disclosure to the bankruptcy court).

34. In addition, the Buyer and the Debtors each were represented by separate, experienced professionals, including competent counsel, helping to ensure that the sale process has been fair to date and will continue to be so and that the Sale Agreement was negotiated, proposed, and entered into by the Debtors and the Buyer without collusion, in good faith, and at arm's length. See In re Abbotts Dairies of Pa., Inc., 788 F.2d 143, 149-150 (3rd Cir. 1986) (parties acted in good faith if purchase price is adequate and reasonable, and terms of sale are fully disclosed).

35. Thus, the Debtors submit that this Court should find that the Buyer is entitled to the protection of Bankruptcy Code § 363(m) with respect to the transactions contemplated by the Sale Agreement and, accordingly, should be deemed a good-faith purchaser.

The Sale of the Liquor License Satisfies the Requirements of Bankruptcy Code § 363(n)

36. Bankruptcy Code § 363(n) provides, in pertinent part, that “the trustee may avoid a sale ... if the sale price was controlled by an agreement among potential bidders ... .” The Debtors are unaware of any agreements among potential bidders that would violate Section 363(n).

37. Accordingly, for all of the reasons set forth above, the Debtors submit that the requested relief should be granted. To facilitate the closing of the transactions contemplated by this motion, the Debtors also requested that their Chief Restructuring Officer or any successor or agent established by order of this Court be authorized to effectuate any necessary documentation or transfers with any applicable local or state licenses on regulatory boards or agencies (collectively, the “Liquor Boards”), and that the Liquor Boards be directed to accept any such documentation or transfers submitted by the Debtors’ Chief Restructuring Officer or any such successor or agent on behalf of the Debtors.

**NOTICE**

38. Notice of this Motion has been given, in accordance with the Bankruptcy Rules and the Local Rules, via first-class mail, e-mail, facsimile, telephone, and/or hand delivery, as appropriate, to the United States Trustee, counsel to the Committee, counsel to the Debtors’ pre- and post-petition secured lenders, counsel to the holders of the Debtors’ subordinated notes, the Debtors’ equity sponsor, the Buyer, any parties known to the Debtors that may have any interest or right in the Liquor License, including the Debtors’ former landlord under the lease for the Dedham Restaurant and the Liquor Boards, and all parties that have requested service of notice in these cases pursuant to Bankruptcy Rule 2002. The Debtors submit that no other or further notice need be given in light of the circumstances of these cases.

**REQUEST FOR WAIVER OF STAY**

39. In order to successfully implement the foregoing as expeditiously and efficiently as possible, the Debtors seek a waiver of the 14-day stay of any order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

**NO PREVIOUS REQUEST**

40. No previous request for the relief sought in this Motion has been made to this or to any other Court.

CONCLUSION

WHEREFORE, the Debtors request entry of an order, substantially in the form attached here as Exhibit B, granting the relief requested herein and such other and further relief as is just and proper under the circumstances.

Dated: January 31, 2011  
Wilmington, Delaware

Respectfully submitted,



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Attorneys for the Debtors and  
Debtors-in-Possession

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
CB HOLDING CORP., <u>et al.</u> , <sup>1</sup>	)	Case No. 10-13683 (MFW)
	)	
Debtors.	)	Jointly Administered
	)	Hearing Date: March 9, 2011 at 11:30 a.m. (ET)
	)	Objection Deadline: March 2, 2011 at 4:00 p.m. (ET)

**NOTICE OF MOTION AND HEARING**

PLEASE TAKE NOTICE that on January 31, 2011, the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) filed the **Debtors’ Motion for Order Approving Sale of Liquor License Number 02740020 Free and Clear of All Liens, Claims,**

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<sup>1</sup> The other Debtors, and the last four digits of each of their tax identification numbers, are: 1820 Central Park Avenue Restaurant Corp. (5151); Bugaboo Creek Acquisition, LLC (4629); Bugaboo Creek Holdings, Inc. (0966); Bugaboo Creek of Seekonk, Inc. (1669); CB Holding Corp. (8640); CB VII, Inc. (9120); CB VIII, Inc. (1468); Charlie Brown North (6721); Charlie Brown’s Acquisition Corp. (8367); Charlie Brown’s at Clifton, Inc. (7309); Charlie Brown’s Mark Corp. (3569); Charlie Brown’s Montclair, Inc. (4223); Charlie Brown’s 1981, Inc. (7781); Charlie Brown’s of Allentown, L.L.C. (8420); Charlie Brown’s of Alpha, Inc. (9083); Charlie Brown’s of Berwyn, LLC (3347); Charlie Brown’s of Blackwood, L.L.C. (5698); Charlie Brown’s of Bloomsburg, LLC (3326); Charlie Brown’s of Brielle, Inc. (8115); Charlie Brown’s of Carlstadt, Inc. (6936); Charlie Brown’s of Chatham, Inc. (2452); Charlie Brown’s of Commack LLC (4851); Charlie Brown’s of Denville, Inc. (1422); Charlie Brown’s of East Windsor, LLC (2747); Charlie Brown’s of Edison, Inc. (8519); Charlie Brown’s of Egg Harbor Twp, LLC (none); Charlie Brown’s of Franklin, LLC (5232); Charlie Brown’s of Garden City, LLC (7440); Charlie Brown’s of Hackettstown, L.L.C. (7493); Charlie Brown’s of Harrisburg, LLC (1085); Charlie Brown’s of Hillsborough, Inc. (0344); Charlie Brown’s of Holtsville, LLC (0138); Charlie Brown’s of Jackson, LLC (3478); Charlie Brown’s of Lacey, L.L.C. (6282); Charlie Brown’s of Lakewood, Inc. (0156); Charlie Brown’s of Langhorne, LLC (3392); Charlie Brown’s of Lynbrook LLC (2772); Charlie Brown’s of Maple Shade, Inc. (0404); Charlie Brown’s of Matawan, Inc. (8337); Charlie Brown’s of Middletown LLC (7565); Charlie Brown’s of Oradell, Inc. (0348); Charlie Brown’s of Pennsylvania, Inc. (6918); Charlie Brown’s of Piscataway, LLC (8285); Charlie Brown’s of Reading, LLC (1214); Charlie Brown’s of Scranton, LLC (9817); Charlie Brown’s of Selinsgrove, LLC (6492); Charlie Brown’s of Springfield, LLC (9892); Charlie Brown’s of Staten Island, LLC (1936); Charlie Brown’s of Tinton Falls, Inc. (6981); Charlie Brown’s of Toms River, LLC (5492); Charlie Brown’s of Union Township, Inc. (8910); Charlie Brown’s of Trexlertown, LLC (6582); Charlie Brown’s of Wayne, Inc. (4757); Charlie Brown’s of West Windsor, Inc. (0159); Charlie Brown’s of Williamsport LLC (8218); Charlie Brown’s of Woodbury, Inc. (0601); Charlie Brown’s of York, LLC (0980); Charlie Brown’s of Yorktown, LLC (7855); Charlie Brown’s Restaurant Corp. (7782); Charlie Brown’s Steakhouse Fishkill, Inc. (9139); Charlie Brown’s Steakhouse Woodbridge, Inc. (1906); Charlie Brown’s, Inc. (4776); Jonathan Seagull Property Corp. (7248); Jonathan Seagull, Inc. (9160); The Office at Bridgewater, Inc. (3132); The Office at Cranford, Inc. (3131); The Office at Keyport, Inc. (1507); The Office at Montclair, Inc. (3128); The Office at Morristown, Inc. (3127); The Office at Ridgewood, Inc. (2949); The Office at Summit, Inc. (3126); and What’s Your Beef V, Inc. (4719). The Debtors’ address is 1450 Route 22 West, Mountainside, NJ 07092.

**Encumbrances, Attachments, and Other Interests** (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, filed with the Clerk of the Court, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801, and served upon and received by the undersigned attorneys for the Debtors on or before **March 2, 2011 at 4:00 p.m. (ET)**.

PLEASE TAKE FURTHER NOTICE that a hearing with respect to the Motion will be held on **March 9, 2011 at 11:30 a.m. (ET)** before The Honorable Mary F. Walrath, United States Bankruptcy Judge for the District of Delaware at the Court, 824 Market Street, 5<sup>th</sup> Floor, Courtroom 4, Wilmington, Delaware 19801.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.



Dated: January 31, 2011  
Wilmington, Delaware

Respectfully submitted,



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Mark D. Collins (No. 2981)  
Christopher M. Samis (No. 4909)  
Kristine G. Manoukian (No. 5509)  
Tyler D. Semmelman (No. 5386)  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701

-and-

Joel H. Levitin  
Richard A. Stieglitz Jr.  
Maya Peleg  
CAHILL GORDON & REINDEL LLP  
Eighty Pine Street  
New York, New York 10005  
Telephone: (212) 701-3000  
Facsimile: (212) 269-5420

*Attorneys for the Debtors and  
Debtors-in-Possession*

**EXHIBIT A**

**Sale Agreement**

## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("P&S") is made as of January 28, 2011, by and between Bugaboo Creek Holdings, Inc., (hereinafter called the "Seller") and Shack Foods of Dedham, LLC, a Delaware limited liability company with an address at 149 Alewife Brook Parkway, Cambridge, Massachusetts (hereinafter called the "Buyer").

WHEREAS, the Seller holds a Seven Day All Alcoholic Beverages License No. 02740020 with a 1:00 a.m. closing hour, pursuant to G.L. c. 138, § 12 ("License"), for a restaurant currently located at 850 Providence Highway, Dedham, Massachusetts (the "Premises");

WHEREAS, subject to terms hereof, the Seller is desirous to transfer and sell the License to the Buyer;

WHEREAS, the Buyer is desirous of purchasing the License for use at its restaurant to be located at the Premises and

WHEREAS, Seller filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on November 17, 2010, in the United States Bankruptcy Court for the District of Delaware (the "Court").

NOW, THEREFORE, for mutual considerations, the receipt of which are hereby acknowledged, the parties hereto agree as follows:

1. Sale of License. Subject to the approval of the Court and approval of the licensing board of the Town of Dedham ("Licensing Board") and the ABCC (as defined herein), the Seller will sell the License issued by the Town of Dedham to the Buyer and cooperate to effectuate a transfer of the same to the Buyer for the sum of Two Hundred Fifty Thousand and 00/100 (\$250,000.00)

Dollars, free and clear of any attachments, liens, claims, or other encumbrances. Buyer shall assume no liabilities of the Seller.

2. Payment. The purchase price of \$250,000.00 shall be paid as follows:

(a) \$ 25,000.00                      Deposit to the Escrow Agent (as defined herein) with execution of this P&S.

(b) \$225,000.00                      Balance at Closing in cash, wire, or certified check of the Buyer to the Seller.

3. Deposit. Simultaneous with the execution hereof, Buyer shall deposit (the "Deposit") with Wilmington Trust Company, acting as escrow agent for the parties hereto ("Escrow Agent"), Twenty-Five Thousand (\$25,000.00). In the event that the transaction is not completed because of a default of the Buyer of its obligations under this P&S, the Escrow Agent will pay the Deposit over to the Seller within ten (10) business days of the termination of this P&S. The delivery of the Deposit to the Seller upon default of the Buyer shall be as liquidated damages.

4. Taxes; Transfer Fees. In addition to the purchase price, Buyer shall also pay all filing fees, renewal costs (for the unexpired portion of the License term at Closing and/or for any License period after Closing), ABCC (as defined herein) application fees, and Buyer's attorney fees associated with the transfer of the License. Seller shall pay its own counsel fees and any sales tax or unemployment taxes due in order to obtain a tax clearance certificate to transfer the License.

5. Representations and Warranties.

Seller warrants and represents to Buyer the following:

(a) Seller, subject to approval of the Court, has full authority and power to enter into this transaction, and the consummation and execution of this transaction does not and will not violate any provision of the Seller's Articles of Incorporation or Bylaws, or any judicial or administrative order, award, judgment, or decree applicable to Seller;

(b) Seller owns all right, title, and interest to the License being sold under this P&S, subject to the approval of the Court;

(c) The License is in full force and effect, and valid for the period through and including December 31, 2011, except that the license is an inactive pocket license at present with approval of the Town of Dedham;

(d) The Seller is in good standing with the Licensing Board and the Massachusetts Alcoholic Beverages Control Commission ("ABCC"), and is not on any delinquency list under Massachusetts General Laws, Chapter 138, Section 25; and

(e) This P&S has been duly executed and delivered and constitutes a legal and binding agreement.

Buyer warrants and represents to Seller the following:

(a) That (i) it is a limited liability company in good standing in the State of Delaware and the Commonwealth of Massachusetts, (ii) any applicable members satisfy the above requirements, and (iii) any manager is a U.S. citizen, a resident of the Commonwealth of Massachusetts, and experienced in the sale of alcoholic beverages; and

(b) That no liquor license held by Buyer, or any entity in which the Buyer has or had an interest, has been cancelled or revoked, and that Buyer knows of no reason why it cannot be licensed.

6. Application. The Buyer will file an application with the local Licensing Board for approval of the transfer of the License within fifteen (15) business days from the execution of this P&S and within five (5) days thereafter provide a copy of the transmittal letter to the Seller indicated that the application has been filed. Buyer shall handle the License transfer proceedings before the public agencies with due diligence and make every reasonable effort to secure the approval of the Licensing Board and the ABCC for the transfer of the License from Seller to Buyer. Buyer shall copy Seller with all transmittals letters sent or received regarding the transfer and shall advise Seller of the date of all hearings. Seller will execute any and all papers reasonably necessary or required to obtain said approval (provided that such papers reflect truthfully and completely the data contained therein), and Seller or its attorney shall appear before said Agencies if customarily required to effectuate such transfer.

7. Deliverables. At the time of said Closing, any bills of sale, assignments, and any other instruments reasonably necessary to transfer the License, as provided in this P&S, to the Buyer shall be delivered to the Buyer upon receipt by the Seller of the purchase price, and the sale shall be deemed consummated.

8. Closing. The Closing shall take place within five (5) business days of the later of (a) the date of final approval of the P&S by the Court and (b) the date that approval by the ABCC and the Licensing Board of the License transfer is final and non-appealable. The Closing shall take place

at a time and place to be mutually agreed upon by the Buyer and Seller. If, by no reason of default hereunder, approval of the transfer of the License by the ABCC has not taken place within 120 days of the date of this P&S after diligent efforts and full cooperation by Buyer and Seller to obtain and transfer the same, this P&S shall terminate, and the Deposit shall be delivered to the Buyer by the Escrow Agent, and all obligations between the parties shall cease, unless the parties agree to extend the date for the Closing. Additionally, if the Closing does not take place due to Seller's breach of this P&S, the Deposit shall be returned to the Buyer as liquidated damages, and the Buyer's potential claims against the Seller will be extinguished. If the Closing does not take place due to Buyer's breach of this P&S, the Deposit shall be returned to the Seller as liquidated damages, and the Seller's potential claims against the Buyer's will be extinguished..

9. Notices. That all notices under this P&S shall be given by certified mail, hand delivery, national overnight delivery (such as FedEx) to:

For Buyer to:

Summer Shack of America, LLC  
149 Alewife Brook Parkway  
Cambridge, MA 02140  
Attn: Jasper White, Managing Partner

*and copy to:*

Burns & Levinson LLP  
125 Summer Street  
Boston, MA 02110  
Attn: Leslie B. Muldowney, Esq.

For Seller to:

Bugaboo Creek Holdings, Inc.  
1450 Route 22 West  
Mountainside, New Jersey 07092  
Attn: Gary Lembo, CRO

*and a copy to:*

CAHILL GORDON & REINDEL LLP  
Eighty Pine Street  
New York, New York 10005  
Attn: Joel H. Levitin, Richard A. Stieglitz Jr., and Maya Peleg

VICTOR & BERNSTEIN, P.C.  
18 East 41st Street, 10th Floor  
New York, NY 10017  
Attn: Saul Victor, Donald Bernstein, and Martha M. Redo

10. Other. Each party shall bear the expense of its own professionals engaged to perform services in connection with this matter. In the event of the Buyer's default or the failure of this transaction to be consummated, Buyer shall execute any and all documentation needed to withdraw any pending applications relating to the transfer of the License, and deliver all such papers as may be necessary to vest and restore the License to the Seller.

11. Entire Agreement. That this P&S contains the entire agreement between the parties and is intended as a final expression of their agreement and a complete statement of the terms hereof and may not be modified except in a writing signed by the parties hereto.

12. Assignment. This Agreement shall not be assigned by Buyer, except to an entity in which Buyer maintains a controlling interest, without Seller's prior written consent.



13. Severability. If any provision of this Agreement, or the application thereof to any party or circumstance, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to other parties or circumstances, shall not be affected thereby, and to this end the provisions of this Agreement are declared severable.

14. Benefit. This Agreement shall be binding upon and inure to the benefit and be enforceable against the parties, their respective heirs, executors, administrators, successors, nominees, and assigns.

15. Governing Law. This P&S is intended to be performed in Massachusetts and shall be construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts. The Court shall have sole jurisdiction to interpret and enforce the terms of this P&S.

16. Waiver. The failure of the Seller or Buyer to insist upon strict performance of any of the covenants or conditions of this Agreement shall not be construed as a waiver by such party of any of its rights or remedies under this Agreement, and shall not be construed as a waiver, relinquishment or failure of any such covenants, conditions, or options.

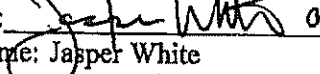
17. Descriptive Headings. The descriptive headings used herein are for convenience only and they are not intended to indicate all of the matters in the sections which follow them. Accordingly, they shall have no effect whatsoever in determining the rights or the obligations of the parties.

18. This Agreement may be executed with original, faxed, or e-mail signatures in one or more counterparts, each of which, when taken together, shall constitute a single original.

IN WITNESS WHEREOF, the parties have executed this P&S as of the date written above.

BUYER:

SHACK FOODS OF DEDHAM, LLC  
By: Jasper White, Inc., its manager

By:  01.28.11  
Name: Jasper White  
Title: President and Treasurer

SELLER:

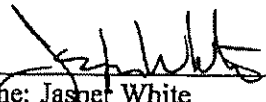
BUGABOO CREEK HOLDINGS, INC.

By: \_\_\_\_\_  
Name: Gary Lembo  
Title: Chief Restructuring Officer

IN WITNESS WHEREOF, the parties have executed this P&S as of the date written above.

BUYER:

SHACK FOODS OF DEDHAM, LLC  
By: Jasper White, Inc., its manager

By:  01/28/11  
Name: Jasper White  
Title: President and Treasurer

SELLER:

BUGABOO CREEK HOLDINGS, INC.

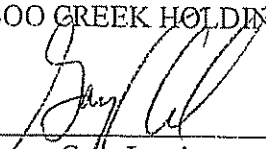
By: \_\_\_\_\_  
Name: Gary Lembo  
Title: Chief Restructuring Officer

IN WITNESS WHEREOF, the parties have executed this P&S as of the date written above.

SELLER:

BUGABOO CREEK HOLDINGS, INC.

By:

  
\_\_\_\_\_  
Name: Gary Lembo  
Title: Chief Restructuring Officer

**EXHIBIT B**

**Proposed Form of Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
	)	
CB HOLDING CORP., <u>et al.</u> , <sup>1</sup>	)	Case No. 10-13683 (MFW)
	)	Jointly Administered
Debtors.	)	
	)	Re: Docket No. _____

**ORDER APPROVING SALE OF LIQUOR LICENSE  
NUMBER 02740020 FREE AND CLEAR OF ALL LIENS,  
CLAIMS, ENCUMBRANCES, ATTACHMENTS, AND OTHER INTERSTS**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the Debtors for entry of an

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<sup>1</sup> The other Debtors, and the last four digits of each of their tax identification numbers, are: 1820 Central Park Avenue Restaurant Corp. (5151); Bugaboo Creek Acquisition, LLC (4629); Bugaboo Creek Holdings, Inc. (0966); Bugaboo Creek of Seekonk, Inc. (1669); CB Holding Corp. (8640); CB VII, Inc. (9120); CB VIII, Inc. (1468); Charlie Brown North (6721); Charlie Brown’s Acquisition Corp. (8367); Charlie Brown’s at Clifton, Inc. (7309); Charlie Brown’s Mark Corp. (3569); Charlie Brown’s Montclair, Inc. (4223); Charlie Brown’s 1981, Inc. (7781); Charlie Brown’s of Allentown, L.L.C. (8420); Charlie Brown’s of Alpha, Inc. (9083); Charlie Brown’s of Berwyn, LLC (3347); Charlie Brown’s of Blackwood, L.L.C. (5698); Charlie Brown’s of Bloomsburg, LLC (3326); Charlie Brown’s of Brielle, Inc. (8115); Charlie Brown’s of Carlstadt, Inc. (6936); Charlie Brown’s of Chatham, Inc. (2452); Charlie Brown’s of Commack LLC (4851); Charlie Brown’s of Denville, Inc. (1422); Charlie Brown’s of East Windsor, LLC (2747); Charlie Brown’s of Edison, Inc. (8519); Charlie Brown’s of Egg Harbor Twp, LLC (none); Charlie Brown’s of Franklin, LLC (5232); Charlie Brown’s of Garden City, LLC (7440); Charlie Brown’s of Hackettstown, L.L.C. (7493); Charlie Brown’s of Harrisburg, LLC (1085); Charlie Brown’s of Hillsborough, Inc. (0344); Charlie Brown’s of Holtsville, LLC (0138); Charlie Brown’s of Jackson, LLC (3478); Charlie Brown’s of Lacey, L.L.C. (6282); Charlie Brown’s of Lakewood, Inc. (0156); Charlie Brown’s of Langhorne, LLC (3392); Charlie Brown’s of Lynbrook LLC (2772); Charlie Brown’s of Maple Shade, Inc. (0404); Charlie Brown’s of Matawan, Inc. (8337); Charlie Brown’s of Middletown LLC (7565); Charlie Brown’s of Oradell, Inc. (0348); Charlie Brown’s of Pennsylvania, Inc. (6918); Charlie Brown’s of Piscataway, LLC (8285); Charlie Brown’s of Reading, LLC (1214); Charlie Brown’s of Scranton, LLC (9817); Charlie Brown’s of Selinsgrove, LLC (6492); Charlie Brown’s of Springfield, LLC (9892); Charlie Brown’s of Staten Island, LLC (1936); Charlie Brown’s of Tinton Falls, Inc. (6981); Charlie Brown’s of Toms River, LLC (5492); Charlie Brown’s of Union Township, Inc. (8910); Charlie Brown’s of Trexlertown, LLC (6582); Charlie Brown’s of Wayne, Inc. (4757); Charlie Brown’s of West Windsor, Inc. (0159); Charlie Brown’s of Williamsport LLC (8218); Charlie Brown’s of Woodbury, Inc. (0601); Charlie Brown’s of York, LLC (0980); Charlie Brown’s of Yorktown, LLC (7855); Charlie Brown’s Restaurant Corp. (7782); Charlie Brown’s Steakhouse Fishkill, Inc. (9139); Charlie Brown’s Steakhouse Woodbridge, Inc. (1906); Charlie Brown’s, Inc. (4776); Jonathan Seagull Property Corp. (7248); Jonathan Seagull, Inc. (9160); The Office at Bridgewater, Inc. (3132); The Office at Cranford, Inc. (3131); The Office at Keyport, Inc. (1507); The Office at Montclair, Inc. (3128); The Office at Morristown, Inc. (3127); The Office at Ridgewood, Inc. (2949); The Office at Summit, Inc. (3126); and What’s Your Beef V, Inc. (4719). The Debtors’ address is 1450 Route 22 West, Mountainside, NJ 07092.

<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

order, pursuant to Bankruptcy Code §§ 105(a) and 363(b)(1), Bankruptcy Rules 2002, 6004, and 9014, and Local Rule 6004-1, approving the sale of the Liquor License, as described in the Motion and as provided for by the Sale Agreement; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and the Court having found that good and sufficient cause exists for granting the Motion; and it appearing that the sale of the Liquor License pursuant to the Sale Agreement is within the Debtors' sound and prudent business judgment; and upon the record of these Chapter 11 cases and any hearings held to consider the Motion; and it appearing that the relief requested in the Motion is appropriate in the context of these cases and in the best interests of the Debtors and their respective estates, creditors, and all other parties-in-interest; and it appearing that notice of the Motion and the relief requested therein was adequate and proper under the circumstances of these cases, including the Notice provided to the Liquor Boards, and it appearing that no other or further notice need be given;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein.
2. The Debtors are authorized and empowered, in their discretion to sell the Liquor License. The Sale Agreement is approved, and the Debtors are authorized to execute it.
3. The Buyer is deemed a good-faith purchaser of the Liquor License entitled to the protection of Bankruptcy Code § 363(m) with respect to the transactions contemplated by the Sale Agreement.
4. The sale of the Liquor License to the Buyer does not violate the requirements of Bankruptcy Code § 363(n).

5. The Debtors and Buyer are authorized and directed to take all actions, and execute all documents, necessary or appropriate to effectuate the sale of the Liquor License to the Buyer. In connection therewith, the Debtors' Chief Restructuring Officer or any successor or agent established by order of this Court shall be authorized to effectuate any necessary documentation or transfers with the Liquor Boards, to facilitate the sale and transfer of the Liquor License contemplated and authorized by this order, and the Liquor Boards are directed to accept any such documentation or transfers submitted to the Debtors' Chief Restructuring Officer or any such successor or agent on behalf of the Debtors.

6. The Debtors and the Buyer are authorized to amend or modify the Sale Agreement without further order of this Court, provided that any such amendments or modifications are non-material and do not have an adverse affect on the Debtors or their estates.

7. The Debtors are authorized and empowered to take any and all actions necessary to implement the terms of this Order.

8. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry notwithstanding any applicability of Bankruptcy Rule 6004(h) or otherwise.

9. This Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

Dated: \_\_\_\_\_, 2011  
Wilmington, Delaware

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THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE